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SERVICE DATE - OCTOBER 17, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 199X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN BUNCOMBE COUNTY, NC

Decided: October 12, 2000

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 3.45-mile line of its railroad between old Asheville Southern Station 76+97 at Asheville and old Asheville & Craggy Mountain Station 123+00 at New Bridge, in Buncombe County, NC. Notice of the exemption was served and published in the Federal Register on September 18, 2000 (65 FR 56361-62). The exemption is scheduled to become effective on October 18, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on September 27, 2000. In the EA, SEA states that the National Geodetic Survey (NGS) has identified six geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring NS to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

SEA also states that the North Carolina State Historic Preservation Office (SHPO) has not completed its review of the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring NS to retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment in this proceeding. By petition filed September 11, 2000, the Town of Woodfin (Woodfin) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with NS for use of the line as a recreational trail. Woodfin requests that NS be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, along the right-of-way, except for public use on reasonable terms, and that NS be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period extending from the effective date of the abandonment exemption.

By reply filed September 23, 2000, NS states that it is not willing to negotiate with Woodfin for interim trail use. NS asserts that, upon abandonment, it plans to sell the right-of-way structures to Craggy Mountain Railroad, Inc. (CMR) for use as a tourist or scenic train and any delay would be detrimental to CMR's plans for the right-of-way. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

NS also opposes imposition of a public use condition. As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. To justify a public use condition a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Woodfin has met these requirements, and while NS has opposed the request for a public use condition as well as the trail use request, a 180-day public use condition will be imposed. NS is required to leave bridges, trestles, culverts, and tunnels intact during that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found appropriate for public purposes.¹

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for issuance of a notice of interim trail use/rail banking is denied.
3. The exemption of the abandonment of the line described above is subject to the conditions that: (a) NS consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers and (b) NS retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
4. The request for a public use condition is granted. The exemption of the abandonment of the 3.45-mile segment is subject to the condition that NS leave intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from the October 18, 2000 effective date of the

¹ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

abandonment exemption (i.e., until April 17, 2001), to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

5. The decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary